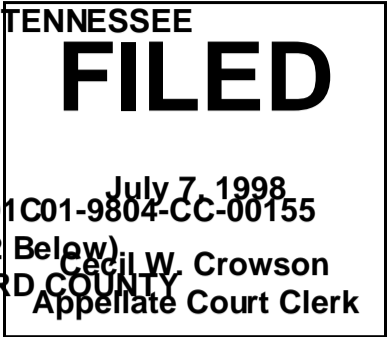


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE



ROBERT LEE WADE,)
) C.C.A. NO. 01C01-9804-CC-00155
Appellant,) (No. F-44222 Below)
) RUTHERFORD COUNTY
VS.) Cecil W. Crowson
) Appellate Court Clerk
)
) The Hon. Joseph S. Daniel
STATE OF TENNESSEE,)
)
) (Dismissal of Post-Conviction Petition)
Appellee.)
)
) AFFIRMED PURSUANT TO RULE 20

ORDER

This matter is before the Court upon the state’s motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules.

The petitioner was convicted of felony murder and sentenced to life imprisonment. This Court affirmed the judgment in Robert Lee Wade, Jr. v. State, No. 83-285-III (Tenn. Crim. App., at Nashville, June 26, 1984), and permission to appeal was denied by our Supreme Court on October 29, 1984. Thereafter, the dismissal of the petitioner’s first petition for post-conviction relief was upheld by this Court. Robert Lee Wade v. State, No. 88-212-111 (Tenn. Crim. App., at Nashville, Dec. 29, 1988). The petitioner filed a second post-conviction petition on March 2, 1998. Subsequently, on March 12, 1998, the trial court dismissed the petition as outside the statute of limitation. We affirm.

Pursuant to T.C.A. § 40-30-206(a), a petitioner must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal was taken. The Compiler’s Notes to T.C.A. § 40-30-201 states that the 1995 Post-Conviction Act governs all petitions for post-conviction relief filed after May 10, 1995.

Under T.C.A. § 40-30-202(b), a court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitation unless (1) the claim in the petition is based upon a final ruling of an appellate court

establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required; (2) the claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or (3) the claim in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid.

In the present case, the petitioner filed his petition for post-conviction relief on March 2, 1998, and therefore, the petition is governed by the 1995 Post-Conviction Act. The petition was filed outside the statute of limitation set forth in T.C.A. § 40-30-202(a), and the petitioner has failed to show that any of his claims fall within one of the exceptions set forth in T.C.A. § 40-30-202(b).

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment of the trial court under Rule 20, Tennessee Court of Criminal Appeals Rules, is granted, and the judgment of the trial court is affirmed. It appearing that the petitioner is indigent, costs of these proceedings are taxed to the state.

DAVID H. WELLES, JUDGE

CONCUR:

JERRY L. SMITH, JUDGE

THOMAS T. WOODALL, JUDGE